

## § 32.320

condition giving rise to the CAA or CWA violation has been corrected.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988; 61 FR 28757, June 6, 1996]

### § 32.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (*see* § 32.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 32.311 through 32.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19196, 19204, May 26, 1988, as amended at 54 FR 4962, Jan. 31, 1989]

## 40 CFR Ch. I (7–1–02 Edition)

### § 32.321 Reinstatement of facility eligibility.

(a) A written petition to reinstate the eligibility of a CAA or CWA ineligible facility may be submitted to the EPA Debarring Official. The petitioner bears the burden of providing sufficient information and documentation to establish, by a preponderance of the evidence, that the condition giving rise to the CAA or CWA conviction has been corrected. If the material facts set forth in the petition are disputed, and the Debarring Official denies the petition, the petitioner shall be afforded the opportunity to have additional proceedings as provided in § 32.314(b).

(b) A decision by the EPA Debarring Official denying a petition for reinstatement may be appealed under § 32.335.

[61 FR 28757, June 6, 1996]

### § 32.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (*see* §§ 32.311 through 32.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

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(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

### § 32.335 Appeal.

(a) The debarment determination under § 32.314 shall be final. However, any party to the action may request the Director, Office of Grants and Debarment (OGD Director), to review the findings of the Debarring Official by filing a request with the OGD Director within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OGD Director. If a review is granted, the debarring official may stay the effective date of a debarment order pending resolution of the appeal. If a debarment is stayed, the stay shall be automatically lifted if the OGD Director affirms the debarment.

(c) The review shall be based solely upon the record. The OGD Director may set aside a determination only if it is found to be arbitrary, capricious,

and abuse of discretion, or based upon a clear error of law.

(d) The OGD Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under § 32.314 or a review under this section shall not be subject to a dispute or a bid protest under parts 30, 31 or 33 of this subchapter.

[53 FR 19197, May 26, 1988, as amended at 59 FR 50693, Oct. 5, 1994; 62 FR 47149, Sept. 8, 1997]

## Subpart D—Suspension

### § 32.400 General.

(a) The suspending official may suspend a person for any of the causes in § 32.405 using procedures established in §§ 32.410 through 32.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 32.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

### § 32.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 32.400 through 32.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 32.305(a); or

(2) That a cause for debarment under § 32.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

### § 32.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source